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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHEN R. LAWRENCE

Appeal 2009-005645
Application 10/815,150
Technology Center 2100

Before: JAMES D. THOMAS, CAROLYN D. THOMAS, and DEBRA K. STEPHENS, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

Appellant appeals under 35 U.S.C. § 134(a) (2002) from a final rejection of claims 1-26. We have jurisdiction under 35 U.S.C. § 6(b) (2008).

We AFFIRM-IN-PART.

Introduction

According to Appellant, the invention is generally a system and method for information retrieval and more specifically to systems and methods for analyzing boilerplate. (Spec. 2, Para. [0002]).

STATEMENT OF CASE

Exemplary Claim(s)

Claim 1 is an exemplary claim and is reproduced below:

1. A method comprising:

identifying a common element in a plurality of articles;

analyzing a spatial location of the common element in an article of the plurality of articles; and

determining whether the common element is a boilerplate element of the article based at least in part on the spatial location.

Prior Art

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Wolton	US 2004/0030741 A1	Feb. 12, 2004
Jordahl	US 2004/0036716 A1	Feb. 26, 2004

REJECTIONS

Claims 1-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jordahl and Wolton. (Ans. 3-14).

GROUPING OF CLAIMS

(1) Appellant argues claims 1-7, 10, 12-18, 21 and 23-26 as a group on the basis of claim 1 (App. Br. 6-8). We accept independent claim 1 as the representative claim. We will, therefore, treat claims 2-7, 10, 12-18, 21 and 23-26 as standing or falling with representative claim 1.

(2) Appellant argues claims 11 and 22 as a group. Appellant states that claim 11 incorporates all of the limitations of its parent claim 1 and includes additional limitations. Appellant sets forth additional arguments with regards thereof and states that claim 22 is improper for the same reason (*id. at* 8-9). We will consider claim 11 separately and will treat claim 22 as standing or falling with representative claim 11.

(3) Appellant argues claims 8, 9, 19, and 20 as a group on the basis of claim 8 (*id. at* 9-10). Appellant mentions the dependent claims 9 and 20 in this grouping separately (*id.* at 10), but no substantive different argument is presented from that of the independent parent claims 8 and 19. We select claim 8 as the representative claim and treat claims 9, 19, and 20 as standing or falling with representative claim 8.

We accept Appellant's grouping of the claims. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE 1

35 U.S.C. § 103(a): claims 1-7, 10-18, and 21-26

Appellant asserts that their invention is not obvious over Jordahl and Wolton because neither reference nor a combination thereof teach all of the limitations of claim 1 (App. Br. 6-8, Reply Br. 2-3). Specifically, Appellant contends that the combination does not teach the steps of "analyzing a spatial location of the common element in an article of the plurality of articles" and "determining whether the common element is a boilerplate element of the article based at least in part on the spatial location" as recited in claim 1.

> The Examiner finds that
>
> Jordahl in combination with Wolton teaches the analysis of the spatial locations of the common element in an article and determining whether it is a boiler plate element in paragraphs 47 – 48 [of] Jordahl and [a] detailed explanation of the spatial location of common elements in paragraphs 51 0, 566 and 570 – 571 [of] Wolton shows the analysis of the spatial locations of the common elements which is the boiler element.

(Ans. 15).

Issue 1: Has Appellant shown the Examiner erred in finding that the combination of references teaches or suggests (i) "analyzing a spatial location of the common element in an article of the plurality of articles" and (ii) "determining whether the common element is a boilerplate element of the article based at least in part on the spatial location?"

FINDINGS OF FACT (FF)

Appellant' Invention

> (1) Articles include, for example, word processor, spreadsheet, presentation, email, instant messenger, database and other client application program content files or groups of files, web pages of various formats, such as HTML, XML, XHTML, Portable Document Format (PDF) files, and audio files, video files, or any other document or groups of documents or information of any type whatsoever.

(Spec. 7, [0014]).

(2) "Boilerplate includes, for example, headers, footers, and navigational elements that may occur on multiple articles" (Spec. 13, [0035]).

Jordahl

(3) Methods and systems provide for data storage, retrieval, manipulation, and display. Search engines and computer-based research tools enable multiple hierarchical points of view to make more effective use of data by providing an organizational structure. Thus, representing data elements in a hierarchical structure or hierarchy allows data to be found, examined, and manipulated based on its location in the hierarchy. (Abstract and pg. 1, [0004]).

(4) Analysis of similarities and differences between pieces of information can be customized and displayed. (pg. 3, [0011]).

Wolton

(5) A modular intelligent personal agent system may search, navigate, control, retrieve, analyze, and report results on networks and databases. The system relates to "real-time network search navigation,

selective hypertext document content retrieval, graphically representing the distributed network for analysis and providing remote communications notification and results delivery to users." (Abstract and pg. 1, [0002]).

(6) A web site may have a plurality of elements and a corresponding plurality of elements in an information environment metaphor. The two or more information representation environments may be correlated where elements represented in both have identified common locations relative to each other. (Pg. 26, [0569]).

(7) Identified element locations in multiple representations have common elements that may correspond to the same information referent elements. Graphical animation morphing may occur between the two. Common morph target anchor points are common spatial element locations in different information environment metaphors or source referent information sources. (Pg. 26, [571]).

Dictionary

(8) The term "boilerplate" is defined as "standardized text" or "formulaic or hackneyed language" (*Merriam-Webster's Collegiate Dictionary* 129 (10th ed. 2000).

ANALYSIS

Appellant does not provide an explicit definition of "article" or "boilerplate" in their Specification. Instead, Appellant provides a few examples of an article and boilerplate, respectively as, "any other information of any type whatsoever" and "headers, footers, and navigational elements that may occur on multiple articles" (FF 1 and FF 2). "In the absence of an express intent to impart a novel meaning to the claim terms,

the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art." *Brookhill-Wilk 1, LLC. v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003). "[T]he words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal citations omitted).

We thus construe "article" using a broad, but reasonable, definition in light of the Specification, and conclude "article" includes web sites. We further conclude that in light of the Specification, one of ordinary skill in the art, who at the time of the invention would have construed "boilerplate" as standardized or formulaic text (FF 8), to more broadly encompass standardized or formulaic text, headers, footers, or navigational elements or other standardized or formulaic features.

Appellant's arguments focus on the individual differences between the limitations of claim 1 and the Jordahl and Wolton references (App. Br. 6-8 and Reply Br. 2 and 3). However, it is evident from the Examiner's line of reasoning set forth in the Answer (Ans. 3, 4 and 15) that the Examiner is relying on the combination of Jordahl and Wolton in rejecting the present invention as recited in claim 1. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Keller*, 642 F. 2d 413, 425 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F. 2d 1091, 1096 (Fed. Cir. 1986).

In other words, while Appellant contends that Jordahl lacks teaching a specific feature, that feature is taught by Wolton for the reasons set forth by the Examiner. Similarly, while Appellant contends that Wolton lacks a specific teaching, this teaching is clearly provided by Jordahl.

Indeed, we find that Jordahl teaches analyzing similarities and differences between pieces of information (FF 3 and FF 4) as Appellant admits (App. Br. 6 and 7). Thus, we find Jordahl teaches analyzing an element in a document.

Wolton teaches that elements in a document (web site) may have common locations relative to each other (FF 6 and FF 7). These common elements and identified elements locations are used in a graphical animation morphing (FF 7). Thus, Wolton teaches using common spatial element locations of elements in documents to perform a function.

We therefore conclude that one of ordinary skill in the art would have found it obvious to use spatial location of an element as one of the criteria for analyzing elements in articles. As a result, we find that Jordahl and Wolton in combination teach "analyzing a spatial location of the element in the article."

We further find that Jordahl teaches determining whether an element has similarities or differences between pieces of information (FF 4). Such a comparison to determine similarities or differences obviously would include a comparison to standardized text as standardized text is a predictable variation on text and text is "pieces of information".

> When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless

> its actual application is beyond his or her skill. *Sakraida* [*v. AG Pro, Inc.*, 425 U.S. 273 (1976)] and *Anderson's-Black Rock*[, *Inc. v. Pavement Salvage Co.*, 396 U.S. 57 (1969)] are illustrative—a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

KSR Int'l v. Teleflex, Inc., 550 U.S. 398, 417 (2007).

Thus we find Jordahl teaches or suggests determining whether the common element (text) is a boilerplate element (standardized text) of the article based at least in part on the criteria selected and the comparison result (FF 4). As discussed above, Wolton teaches a spatial location of the element; therefore, we find the criteria selected may be a spatial location.

As a result, we find the combination of Jordahl and Wolton teaches "determining whether the common element is a boilerplate element of the article based at least in part on the spatial location."

Accordingly, Appellant has not convinced us that the Examiner erred in finding the combination of Jordahl and Wolton teaches the invention as recited in claim 1 and commensurately recited in independent claims 5, 14, and 16. Dependent claims 2-4, 6, 7, 10, 12, 13, 15, 17, 18, 21, and 23-26 were not separately argued. Consequently, Appellant has not shown the Examiner erred in concluding the combination of Jordahl and Wolton render the invention as recited in claims 1-7, 10, 12-18, 21, and 23-26 obvious.

ISSUE 2

35 U.S.C. § 103(a): claims 11 and 22

Appellant asserts that their invention is not obvious over Jordahl and Wolton because neither reference nor a combination thereof teach all of the

limitations of claims 11 and 22 (App. Br. 8-9, Reply Br. 3-4). Specifically, Appellant contends that the combination does not teach the steps of "responding to the common element being the boilerplate element", "removing the boilerplate element from the article," and "indexing the article" as recited in claim 11.

> The Examiner finds that:
>
> Jordahl in combination with Wolton teaches responding to the common element being the boiler plate element and removing it to index the article in paragraphs 77 and 136, Jordahl. Furthermore, Jordahl in paragraph 176 explains in detail the indexing of the article.

(Ans. 15).

Issue 2: Has the Examiner erred in concluding that the combination of Jordahl and Wolton teaches or suggests responding to the common element being the boilerplate element, removing the boilerplate element from the article, and indexing the article as recited in claim 11.

ANALYSIS

We agree with Appellant that the Examiner has not shown that Jordahl teaches or suggest "removing the boilerplate element from the article." Instead, Jordahl teaches sequencing and merging fields that have been recognized as being in common (pg 7, [0077]) and pg.14, [0136]). We further find the Examiner has not shown Wolton overcomes the deficiencies of the Jordahl reference. Thus, Appellant has shown the Examiner erred in finding the combination of Jordahl and Wolton teaches or suggests the invention as recited in claim 11 and commensurately recited in claim 22.

ISSUE 3

35 U.S.C. § 103(a): claims 8 and 19

Appellant asserts that their invention is not obvious over Jordahl and Wolton because neither reference nor a combination thereof teach "analyzing a link associated with the common element in an article of the plurality of articles" and "determining whether the common element is a boilerplate element of the article based at least in part on the link associated with the common element" as recited in claim 8 (App. Br. 9 and 10 and Reply Br. 4 and 5). Specifically, Appellant argues Jordahl only discloses that categories may be linked together not determining if common elements are boilerplate and linking them (App. Br. 10 and Reply 4). Additionally, Appellant argues Wolton only discloses a common element may be represented in different spatial locations in different information environments (App. Br. 10).

The Examiner finds the combination of Jordahl and Wolton teaches the recited invention and specifically, Jordahl teaches linking a common element linked to other item fields (Ans. 16).

Issue 3: Has the Examiner erred in concluding that the combination of Jordahl and Wolton teaches analyzing a link associated with the common element in an article and determining whether the common element is boilerplate?

FURTHER FINDINGS OF FACT (FF)

Jordahl

(9) A Relativity Data Base Management System (DBMS) can link categories in an individual Point Of View's (iPOV's) with those in electronic Bodies Of Knowledge (eBOKs) and Language Databases. The links can be made by matching overlap in category definitions of membership lists. (Pg. 6, [0059]).

(10) Hierarchies can be integrated by, for example, identifying a bond, or link between the hierarchies to establish a common bond between them. For example, hierarchies can be linked by a common element, such as boxes or fields, and this linking can identify the common elements in the respective hierarchies as representing the same item. (Pg. 9, [0096] and pg. 13, [0133]).

ANALYSIS

In Jordahl, data elements are organized into a hierarchical structure with links between various hierarchies that identify common elements (FF 3). Jordahl teaches integrating multiple hierarchies by identifying a link between the hierarchies based on a common element (FF 10). Thus, we find Jordahl teaches "analyzing a link associated with the common element in an article" (any information of any type whatsoever (FF 1) which in Jordahl is data elements (FF 3)). Jordahl also teaches determining whether the common element is a standardized element based at least in part on the link (FF 9 and FF 10). Specifically, Jordahl looks for the common element – which could

be a standardized feature, such as a category definition found in eBOKs and Language Databases (FF 9).

Therefore, we find the combination of Jordahl and Wolton teaches or suggests analyzing a link associated with the common element in an article and determining whether the common element is boilerplate. Accordingly, Appellant has not shown that the Examiner erred in finding claim 8, and commensurately recited claim 19, are obvious over Jordahl and Wolton. Accordingly, Appellant has not shown that the Examiner erred in rejecting claims 8 and 19 under 35 U.S.C. § 103(a) for obviousness over Jordahl and Wolton.

ISSUE 4

35 U.S.C. § 103(a): claims 9 and 20

Appellant asserts that their invention is not obvious over Jordahl and Wolton because neither reference nor a combination thereof teach "wherein analyzing the link associated with the common element comprises analyzing an address to which the link refers" as recited in claim 9 (App. Br. 10). The Examiner finds the combination of Jordahl and Wolton teaches the recited invention and specifically, Jordahl teaches linking a common element linked to other item fields (Ans. 16).

Issue 4: Has the Examiner erred in concluding that the combination of Jordahl and Wolton teaches or suggests "wherein analyzing the link associated with the common element comprises analyzing an address to which the link refers?"

ANALYSIS

We agree with Appellant that the Examiner has not shown Jordahl teaches or suggests analyzing the link comprises analyzing an address to which the link refers. The Examiner did not specifically address Appellant's arguments (App. Br. 10) set forth for claims 9 and 20 in the Answer. In the mapping proffered by the Examiner (Ans. 9), we find no specific teaching or suggestion of "analyzing an address to which the link refers." Specifically, the portions of Jordahl relied on to teach the recited limitation provides an example of (i) how eBOK coalesces frequently used category definitions, relationships between the category definition, and links to external information through use of zip codes and (ii) how linking is used for multiple databases, to develop interest gravity wells, to identify overlap in category definitions, to create new categories, and to provide relevance scores (pg. 5, [0052]) and pg. 6, [0059]). We find the gap in the teachings and suggestions of the cited references and the recited limitation is uncomfortably wide and cannot be bridged with theories or speculation. We further find the Examiner has not shown that Wolton cures the deficiencies of Jordahl.

Thus, we find the weight of the evidence supports Appellant's contention that the Examiner has not sufficiently shown the correspondence between the claim elements and the relevant portions of the cited references to establish a prima facie case of obviousness. Therefore, Appellant has shown the Examiner erred in finding the combination of Jordahl and Wolton teaches or suggests the invention as recited in claim 9 and commensurately recited in claim 20. Accordingly, Appellant has shown that the Examiner

erred in rejecting claims 9 and 20 under 35 U.S.C. § 103(a) for obviousness over Jordahl and Wolton.

DECISION

The Examiner's rejection of claims 1-7, 10-18, and 21-26 under 35 U.S.C. § 103(a) as being obvious over Jordahl and Wolton is affirmed.

The Examiner's rejection of claims 11and 22 under 35 U.S.C. § 103(a) as being obvious over Jordahl and Wolton is reversed.

The Examiner's rejection of claims 8 and 19 under 35 U.S.C. § 103(a) as being obvious over Jordahl and Wolton is affirmed.

The Examiner's rejection of claims 9 and 20 under 35 U.S.C. § 103(a) as being obvious over Jordahl and Wolton is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2010).

AFFIRMED-IN-PART

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